IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO.604 OF 2005

Anand R. Kalwani
Age 32 years,
701, Grace, 'B' Wing,
Vasant Oscar, L.B.S.
Marg, Mulund (W),
Mumbai-400 080. .... Petitioner

- Versus -

1. State of Maharashtra
2. Sarika Anand Kalwani
r/o 202, Anmol Building,
Flat No.105, Sector
Kopar, Khairane, Navi
Mumbai-400 209. .... Respondents

Sarvasri Mahesh Jethmalani with D.D. Tiwari
for the Petitioner.
Shri S.R. Shinde, Addl. Public Prosecutor,
for the Respondent No.1.
Ms Veena Thadani for the Respondent No.2.

CORAM: R.M.S. KHANDEPARKAR &
P.V. KAKADE, JJ.
DATED: MAY 04, 2005

JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Heard. Rule. By consent, the rule is made returnable forthwith.

2. The petitioner seeks to quash the FIR No.408/2004 lodged at the Mulund police station on 20-12-2004 under Section 498-A r/w Section 34 of the Indian Penal Code as far as it relates to the petitioner on the ground that the allegations in the complaint do not disclose any offence to have been committed by the petitioner.

3. Undisputed facts disclose that the petitioner is the husband of the respondent No.2, having married on 27-6-2004 and the marriage having been registered on 8-7-2004. The petitioner is employed at Singapore and after the marriage he left for Singapore on 11-7-2004 while the respondent No.2 continued to reside with the family of her in-laws till 14-10-2004.

4. Undisputedly, the FIR dated 20-12-2004 does not

include any allegation against the petitioner though his name was recorded in the column referring to the names of the accused persons. All the allegations relating to the demand of dowry and harassment to the respondent No.2 in the FIR relate to the family members of the petitioner. Undisputedly, the allegations regarding the involvement of the petitioner in the dowry demand was made for the first time in the supplementary statement of the complainant/respondent No.2 on the next date of recording of the FIR i.e. on 21-12-2004.

5. On plain reading of the FIR, therefore, it apparently reveals that the grievance of the complainant in relation to the demand of dowry and the harassment is essentially against the members of the family of the petitioner and not against the petitioner himself. Indeed in the FIR, there is not even a whisper of any sort of harassment by the petitioner to the complainant. One fails to understand, in those circumstances, the reason for inclusion of the name of the petitioner in the FIR. If there are no allegations regarding any offence having been committed by the petitioner, it is not understood how and on what basis the police authorities thought it fit to include the name of the petitioner as one of the accused in the FIR. Indeed on this count itself the petitioner is justified in seeking to quash the said FIR as far as it relates to the

petitioner.

6. It is well-settled that while dealing with the petition for quashing of an FIR, what is necessary for the Court to see is whether the allegations in the complaint reveal the involvement of the petitioner in the offence alleged in the FIR. The petitioner is not entitled to rely upon any evidence in support of his contention in that regard other than the FIR itself. However, if the materials to which attention is sought to be drawn by the petitioner obviously disclose mala fide on the part of the complainant and/or the investigating agency for inclusion of the name of such person in the FIR, certainly nothing prevents the Court in taking into consideration such materials.

7. In the case in hand, it is matter of record that prior to the lodging of the FIR dated 20-12-2004, two letters were sent on 14-10-2004, addressed to the Mulund police station, one written by the complainant/respondent No.2 and the other by her parents. In both the letters the allegations regarding dowry and/or harassment to the respondent No.2 were against the family members of the petitioner and there was no such allegation against the petitioner. It was for the first time that such allegations were sought to be made against the petitioner by way of the

supplementary statement recorded on 21-12-2004. The contents of the letter of the parents of the complainant specifically refers to a phone call on 10-7-2004 by the father-in-law of the respondent No.2 to her parents demanding dowry of Rs.50 lakhs while the letter by the respondent No.2 is totally silent about any such demand.

8. It is also undisputed fact that the respondent No.2 had filed Criminal Writ Petition No.2554 of 2004 against the respondent No.1, the petitioner and the other members of the petitioner's family for issuance of writ of mandamus directing the police authorities to take necessary action against the petitioner and his family members under Section 498-A r/w Section 34 of the Indian Penal Code and Sections 3, 4 and 5 of the Dowry Prohibition Act, 1961. The said petition was filed on 4-12-2004 and it was disposed of on 23-12-2004 taking note of the fact that the Mulund police station had already registered an offence under Section 498 r/w Section 34 of the Indian Penal Code. Even in the said writ petition there was no allegation against the petitioner about the demand of dowry from the parents of the respondent No.2. On the contrary, the alleged incident of 10-7-2004 pertaining to the demand of Rs.50 lakhs as dowry was specifically against the parents of the petitioner, who are the in-laws of the respondent No.2 and who were the respondent Nos.4 and 5 in the said

9. Similarly, in answer to the application for anticipatory bail by the petitioner before the Sessions Court, the investigating officer had filed the reply dated 3-2-2005 wherein the allegations regarding the demand of dowry were entirely against the in-laws of the respondent No.2 and two other family members of the petitioner but there was no allegation in that regard against the petitioner.

10. Undisputedly, therefore, apart from the supplementary statement of the respondent No.2, there is no other material contemporaneous or prior to the recording of the FIR which could reveal any sort of involvement of the petitioner in the alleged demand of dowry or the alleged harassment to the respondent No.2. The attempt to justify the inclusion of the name of the petitioner in the FIR by referring to the supplementary statement is, least to say, ridiculous as no prudent person would have included the name of the petitioner in the FIR merely on speculation that in the supplementary statement yet to be recorded, the complainant would make allegations to justify inclusion of the name of that person in the FIR.

11. The materials on record prima facie justify the

contention of the learned Advocate for the petitioner that the petitioner is sought to be implicated or involved in the alleged offence with ulterior motive to compel the petitioner to settle the dispute between the petitioner and the respondent No.2 which has arisen on account of the fact that the respondent No.2 had undergone the operation, prior to the marriage and which was admittedly not disclosed to the petitioner or his family members prior to the marriage or even after the marriage till it was revealed to the petitioner during the honeymoon. It is stated that the respondent No.2 had undergone the said operation for removal of lump on the right side of the breast. It is pertinent to note that the respondent No.2 did not disclose the biopsy report to the petitioner and his family members inspite of demand for the same and even such report has not been disclosed along with the affidavit in-reply filed by the respondent No.2 in this petition.

12. Besides, prima facie the contents of the supplementary statement relating to the dowry demand by the petitioner ex facie appears to be inconsistent and improbable as compared to the contents of the FIR and the other materials on record. As already stated above, the FIR does disclose the name of the petitioner. However, it nowhere refers to any act of harassment or demand of dowry by the petitioner though various details

of the demand of dowry and harassment at the instance of the other family members have been stated therein. The letter dated 14-10-2004 by the respondent No.2 does not contain any allegation against the petitioner. The letter dated 14-10-2004 by the parents of the respondent No.2 refers to such demand specifically by the father-in-law of the respondent No.2 with specific reference to the date of 10-7-2004. It speaks of such demand by phone call. The specific statement of the respondent No.2 in her supplementary statement refers to such a demand by the petitioner with her parents by calling them at his office on 10-7-2004. There is no reference to any act on the part of the petitioner in the letter dated 14-10-2004 either by the respondent No.2 or by her parents. Being so, the allegations in the supplementary statement prima facie appear to be totally improbable, besides being afterthought.

13. It should not be forgotten that inclusion of the name of a person in the FIR alleging commission of serious offence and particularly relating to the demand of dowry can carry social stigma against such person. That ultimately such person may be acquitted on merits on account of lack of evidence is no justification for such inclusion of the name without any offence being disclosed in the complaint. At the same time, if in the course of the investigation pursuant to the complaint

new facts are revealed to the investigating agency, nothing forbids such agency to take appropriate steps to that effect against the person whose involvement in the offence is revealed subsequently but the same does not justify inclusion of his name in the FIR.

14. For the reasons stated above, therefore, the inclusion of the name of the petitioner in the FIR in question cannot be justified and the petition to that extent needs to be allowed.

15. In the result, therefore, the petition is allowed in terms of the prayer clause (a) to the extent it relates to the petitioner with no order as to costs.

(R.M.S. Khandeparkar, J.)

(P.V. Kakade, J.)